

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:19-cv-00024-FDW**

BRIAN TROY ABERLE,)	
)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
)	
B. PHIL HOWELL, et al.,)	
)	
Defendants.)	
)	

THIS MATTER is before the Court on Plaintiff's Amended Application to Proceed In Form Pauperis. [Doc. 11].

On March 7, 2019, Plaintiff filed his Complaint in this matter under 42 U.S.C. § 1983 and an application to proceed in forma pauperis ("IFP"). [Docs. 1, 2]. In Plaintiff's IFP application, Plaintiff attested that he was incarcerated at the Ashe County Jail and that he has no wages. [Doc. 2 at 1]. On March 21, 2019, the Clerk entered an Order for a certified copy of Plaintiff's most recent trust fund account statement for the six (6) month period immediately preceding the filing of the Complaint in accordance with 28 U.S.C. § 1915. [Doc. 3]. The Order was sent the same day to the Ashe County Detention Center ("Detention Center") where Plaintiff was detained. The Detention Center never provided Plaintiff's most recent trust fund statement and no payments have been made toward Plaintiff's \$400.00 filing fee.

At some point after filing the Complaint in this matter, Plaintiff was transferred to the custody of the Alleghany County Sheriff's Office. On or about May 21, 2019, Plaintiff was released from custody. On June 13, 2019, Plaintiff filed a notice of change of address with the Court reflecting Plaintiff's address in Thornton, Colorado. [Doc. 8]. On December 9, 2019,

Plaintiff filed another notice of change of address with the Court reflecting that his current address in Sioux Falls, South Dakota. [Doc. 10].

On November 18, 2019, given that Plaintiff is no longer incarcerated, has relocated, and may no longer be eligible for IFP status, the Court ordered that Plaintiff either pay the \$400.00 filing fee or file an Amended Application. The Court specifically directed the Plaintiff that, “[s]hould the Plaintiff choose to file an Amended Application, he should use and complete in full the Application to Proceed in District Court without Prepaying Fees or Costs (Long Form) (AO 239), which is available through the Court’s website, <http://www.ncwd.uscourts.gov>.²” [Doc. 9]. Further, the Court ordered:

Plaintiff shall, within thirty (30) days of this Order, either pay the \$400.00 fee to file his Complaint or file an Amended Application, using AO Form 239, within thirty (30) days of entry of this Order.
Failure to pay the fee or to file an Amended Application within the time required will result in the dismissal of this action without prejudice.

[Id. at 2].

On December 10, 2019, the Clerk mailed Plaintiff a blank copy of the proper IFP application form. On December 23, 2019, the Plaintiff filed an amended IFP application on a form that appears to be for cases filed in the Northern District of California. [Doc. 11]. This form does not even resemble the form Plaintiff was directed to use and provided with. Plaintiff, therefore, has failed to comply with the Court’s November 18, 2019 order.

The Court will, therefore, dismiss Plaintiff’s Complaint without prejudice for failure to comply with the Court’s Order.

IT IS, THEREFORE, ORDERED that:

1. The Plaintiff's Complaint is dismissed [Doc. 1] without prejudice.
2. The Clerk is instructed to terminate this action.

Signed: January 14, 2020



Frank D. Whitney
Chief United States District Judge

